No. 11,420

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

PAUL A. PORTER, Administrator, Office of Price Administration,

Appellant,

vs.

DOROTHY HANSCOM and R. C. HANSCOM, d/b/a Dorothy Hanscom's, a Co-partnership,

Appellees.

BRIEF FOR APPELLANT.

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Deputy Administrator for Enforcement,
DAVID LONDON,
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BRIEF FOR APPELLANT.

JURISDICTION.

This is an appeal by the Price Administrator from a judgment of the District Court for the Western District of Washington, Northern Division, dismissing with prejudice the Administrator's complaint for statutory damages brought pursuant to the provisions of Section 205(e) of the Act. (50 U.S.C. § 925(e).) Jurisdiction of the District Court was invoked under Section 205(c) of the Emergency Price Control Act of 1942, as amended. (50 U.S.C. § 925(c).) The judgment was entered on May 17, 1946 (R. 21-22), and

the Notice of Appeal was filed on August 7, 1946. (R. 22-23.) Jurisdiction of this Court is invoked under Section 128 of the Judicial Code. (28 U.S.C. § 225.)

STATUTES AND REGULATIONS INVOLVED.

The pertinent portions of the Act and the regulations are printed in the Appendix.

STATEMENT OF FACTS.

Appellees, Dorothy Hanscom and R. C. Hanscom are retailers of misses' and women's clothing and do business in Seattle under the name of Dorothy Hanscom's. (R. 5.) They commenced doing business in December, 1943. At that time, appellees' operations admittedly were governed by Maximum Price Regulation No. 330. Pursuant thereto appellees were required to and did adopt the pricing charts of its closest competitor, Best's Inc. of Seattle, as a basis for computing their maximum prices. (R. 5.)

Thereafter, Maximum Price Regulation No. 330 was revised and reissued as Revised Maximum Price Regulation No. 330, and became effective on September 18, 1944.

The revised regulation changed the method of determining the price ceilings for retailers as follows:

Dealers were required to compute the ceiling prices by calculating the markup which they took on gar-

ments delivered during the "base period", and applying that markup to their cost of the garments. (Sec. 2(a).)

Two different "base periods" were established for retailers. The base period of August 1 to December 31, 1942 was prescribed for those retailers who made deliveries during that period. For retailers who made their first delivery of garments after October 1, 1941, but before May 18, 1944, the "base period" was the first four months immediately following the first delivery of garments. (Sec. 2(c).)

All dealers were required to file with the district office of the Office of Price Administration, price charts showing selling prices at which they delivered garments during the "base period". (Sec. 3.)

The regulation also contained a note in Section 3 to the effect that the expression "pricing chart" meant a correct pricing chart and that if the seller filed an incorrect or improper pricing chart, his maximum prices should be calculated on the basis of a correct pricing chart.

Under date of September 14, 1944, the Seattle District Office sent a mimeographed letter addressed "To all dealers in Women's, Misses' and Children's Outerwear Garments" over the mimeographed signature of Reed C. Mills, District Price Executive, by Ruth Sollie, Apparel Section. This letter, a copy of which was sent to appellees, advised the dealers of the issuance of the revised regulation and that it was necessary for them to file two signed copies of the pricing

chart, which they had previously prepared in conformance with Maximum Price Regulation No. 330. (R. 6-7.)

On October 7, 1944, a mimeographed Second Notice, identical with the one above discussed was sent to all dealers, including appellees. (R. 7.)

These notices were correct only as the revised regulation applied to retailers who had been in business and had made deliveries during the period between August 1st and December 31, 1942. As to appellees or any retailer who had not made deliveries during that period, these notices were clearly inapplicable, since the Revised Regulation under Section 2(c) prescribed an entirely different base period.

Subsequently, on or about October 12, 1944, appellees filed with the Seattle District Office the pricing charts of Best's Inc. which they had previously adopted as their own under the earlier regulation. (R. 8.) The receipt of the pricing charts was acknowledged by the District Office in a letter which contained the following *caveat:*

> "This acknowledgment is not to be considered as an approval of the factual or mathematical accuracy of the information on the pricing chart. Even though you have filed these figures, if they are incorrect, you are not permitted to take a higher percentage markup than that authorized by Revised Maximum Price Regulation No. 330. However, if you find that your pricing chart is incorrect, you may file an amended pricing chart setting forth the inaccuracies." (R. 9.)

Thereafter, on November 26, 1945, the Seattle District Office advised appellees that the charts which they had filed were erroneously compiled and did not meet the requirements of Revised Maximum Price Regulation No. 330; that appellees should have filed a base period pricing chart based upon deliveries of garments during the first four months following the first delivery of garments by appellees; and requested appellees to file an amended pricing chart, which appellees did. (R. 9-10.)

The amended pricing charts filed by appellees resulted in lower maximum prices for appellees. During the period from January 22, 1945 to the date of the filing of this action, the appellees admittedly had sold apparel at prices in excess of the maximum permitted under the revised regulation, as fixed by the amended pricing charts, totalling $714.01. (R. 11.)

The Administrator commenced this action for statutory damages by reason of such overcharges. (R. 2.) The appellees filed an answer admitting the facts above set forth, but alleging that the violations complained of were committed in good faith and that the Administrator was estopped from prosecuting the action. (R. 4.)

Prior to the trial, the Administrator entered into a stipulation with the appellees in which he conceded that appellees' violations had not been committed wilfully, and, therefore, in the event that judgment would be rendered in favor of plaintiff, he would ask for

damages not to exceed $714.01, the amount of the overcharges. (R. 15-16.)

The appellant made a motion for judgment on the pleadings, which motion was denied. (R. 16-18.)

As has been indicated, the facts were not in dispute and were stipulated. (R. 19.) The issue at the trial was whether appellees had a right to rely upon the mimeographed notices instead of following the requirements of the regulation, and, conversely, whether the Administrator was estopped by reason of the notices from bringing this action. We shall not discuss the evidence offered at the trial, since, as we shall show in our argument, the issue is determined by the provisions of Revised Procedural Regulation No. 1, which the Administrator had promulgated to cover a situation such as is presented in the case at bar.

The trial Court found that the actions of appellees were solely and directly caused by orders given to appellees by plaintiff, and that plaintiff was estopped from maintaining the action; that the plaintiff had failed to prove a violation of any statute or regulation; and entered judgment dismissing the complaint with prejudice. (R. 21-22.) The trial Court's oral decision appears at R. 67.

From that judgment this appeal is being prosecuted.

ARGUMENT.

I.

THE LOWER COURT ERRED IN HOLDING THAT THE ADMINISTRATOR WAS ESTOPPED FROM MAINTAINING THE ACTION.

Preliminarily, we note that the Court in its judgment (R. 21-22) made a finding that plaintiff had failed to prove any violations of any statute or regulation. Actually, this finding is the conclusion at which the lower Court arrived as a result of its holding that the Administrator was estopped from maintaining the action. This is evidenced by the Court's discussion in its oral decision at R. 67-68. The fact that appellees violated the Revised Regulation by selling in excess of the maximum prices permitted to them, as determined by their amended pricing chart, is not disputed by them. (Paragraph IX, defendant's answer, R. 11.)[1] The amount of the overcharges is admitted by appellees to total $714.01.

The defense raised by appellees was that although they did sell in excess of the maximum prices, they acted pursuant to orders from the Seattle District Office, without any intent to violate; and that plaintiff therefore was estopped from prosecuting the action. (R. 11-12.)

Appellant does not dispute the fact that appellees in filing their first pricing chart under the Revised

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[1]The first pricing chart filed by appellees was admittedly incorrect in that it did not conform to the requirements of the Revised Regulation and did not have the effect of establishing for appellees a higher maximum price than that to which they were entitled under the Revised Regulation. See note following Section 3(a)(8) of Revised Maximum Price Regulation No. 330, set forth in the Appendix.

Regulation followed the directions contained in the general mimeographed notices sent to them. However, the issue on this appeal is whether appellees had the legal right to rely upon these general mimeographed notices instead of following the requirements of the Revised Regulation. As pointed out in the Statement of Facts, these notices were correct only as the revised regulation applied to retailers who had been in business and had made deliveries during the period between August 1st and December 31, 1942. As to appellees or any retailer who had not made deliveries during that period, these notices were clearly inapplicable, since the Revised Regulation under Section 2(c) prescribed an entirely different base period. Appellees did not dispute the fact that under the provisions of the Revised Regulation, the pricing chart followed by them was incorrect, since it was not based upon deliveries made by appellees during the first four months immediately following the first deliveries of garments.

The fact that appellees followed the directions contained in the general mimeographed notices, instead of looking to the regulation itself, did not have the effect of absolving them from liability. At most, it is evidence of the fact that they did not violate wilfully. In the operation of an agency of the size of the Office of Price Administration, it is inconceivable that every employee should have the power to interpret the regulations and to bind the Administrator by such interpretations. Such a situation would result in an utter confusion of conflicting and erroneous interpre-

tations which, if binding upon the Administrator, would make enforcement difficult, if not impossible. On the other hand, it is proper that the Administrator should be bound by interpretations issued by those persons whom the Administrator has authorized to issue interpretations. So that the public may know who are the persons upon whose interpretations it may rely, and the circumstances under which official interpretations are issued, the Administrator had promulgated Sections 54 and 55 of Revised Procedural Regulation No. 1, which are set forth in full in the Appendix. The purpose of these Sections was to avoid just such controversies and claims as were asserted by the appellees in the lower Court.

A district price executive is not one of the persons listed in Section 55(b) as one authorized to issue official interpretations. Consequently, the general mimeographed notices which he issued "To all Dealers in Women's, Misses', and Children's Outer Wear Garments", and sent to appellees, did not constitute such an interpretation as could protect appellees and bind the Administrator. Appellees were required to look to the regulation itself. Had they done so, they would have found what their base period was and would have prepared and filed a correct pricing chart, as they eventually did. If they had any doubt as to the requirements of the regulation, they should have applied for an official interpretation in accordance with Sections 54 and 55 of Revised Procedural Regulation No. 1. Admittedly, appellees did not do so. (R. 62.)

It is well settled that appellees had no right to rely upon the mimeographed notices. In *Wells Lamont Corporation v. Bowles* (E.C.A. 1945), 149 F. (2d) 364, the Court said on page 367:

> "It must be presumed that complainant was advised of the procedure it was required to follow in order to obtain an official interpretation upon which it could properly rely. And, since it failed to comply with the prescribed method, it is not entitled to rely upon unofficial oral advice given by subordinate officials in the Office of Price Administration. At first blush, this may seem harsh but, obviously, the Administrator can not be bound by various oral interpretations which happen to be made by his hundreds, perhaps thousands, of employees, in violation of published regulations. He has prescribed a reasonable procedure by which persons subject to the regulations may obtain official interpretations, by which all will be bound. Complainant is not entitled to rely on an unofficial interpretation. *Nichols & Co. v. Secretary of Agriculture,* 1 Cir., 131 F. 2d 651; *United States v. San Francisco,* 310 U. S. 16, 60 S. Ct. 749, 84 L. Ed. 1050; *Utah Power & Light Co. v. United States,* 243 U. S. 389, 37 S. Ct. 387, 61 L. Ed. 791; *Fleming v. Miller,* D. C. 47 F. Suppl. 1004".

To the same effect is *Schreffler v. Bowles* (C.C.A. 10, 1946), 153 F. (2d) 1, 3-4.

Although the Courts in the preceding cases refer to oral interpretations, the same rule applies to written interpretations which are not official interpretations as described in Revised Procedural Regulation No. 1.

In *Bowles v. Indianapolis Glove Company* (C.C.A. 7, 1945), 150 F. (2d) 597, the Court said at page 601:

> "Defendant's last contention is of estoppel. It bases this argument on the conduct of the Administrator in inducing it, for a part of the period complained of, to sell its gloves at prices now charged to violate the law. A similar argument was presented to the Emergency Court of Appeals in the case, *Wells Lamont Corporation v. Bowles,* 149 F. 2d 364, 367. The court, speaking through Judge Lindley, said, 'It must be presumed that complainant was advised of the procedure it was required to follow in order to obtain an official interpretation upon which it could properly rely. And, since it failed to comply with the prescribed method, it is not entitled to rely upon unofficial oral advice given by subordinate officials in the Office of Price Administration. At first blush, this may seem harsh but, obviously, the Administrator can not be bound by various oral interpretations which happen to be made by his hundreds, perhaps thousands, of employees, in violation of published regulations. He has prescribed a reasonable procedure by which persons subject to the regulations may obtain official interpretations, by which all will be bound. Complainant is not entitled to rely on an unofficial interpretation.' *That part of the advice relied upon by defendant in the case at bar to sustain its charges of estoppel was in writing makes it no more binding upon the Administrator than the oral advice in the Wells case.*" (Italics supplied.)

Since the mimeographed notices upon which appellees relied are not official interpretations, the lower

Court clearly erred in holding that the Administrator was estopped from maintaining the suit by virtue of those notices.

II.

GOOD FAITH IS NOT A DEFENSE TO THE ACTION.

In its judgment (R. 21) the Court did not predicate its action in dismissing the complaint upon the fact that the defendant had acted in good faith. However, the Court discusses the defendant's good faith, as well as the alleged estoppel, in its oral decision (R. 67-68) as a basis for its judgment. We shall, therefore, briefly discuss the effect of the fact that the defendants violated the regulation in good faith.

It is well settled that good faith is not a defense to an action for statutory damages for violation of a regulation. The recent decision of the Circuit Court of Appeals for the Eighth Circuit, in the case of *Crary v. Porter,* decided October 4, 1946, not yet reported, presents a thorough discussion of this contention. The Court there said:

> "It is argued that section 205 (d) of the Act, 50 U.S.C.A. Appendix §925(d), exempts a seller from liability for violating a price regulation, if he has acted in good faith. Appellants have misread the language and purpose of this section of the statute. The section provides that 'No person shall be held liable for damages or penalties * * * on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement there-

under * * * notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. * * *' Clearly, this provision has application only to things done pursuant to or in conformity with the Emergency Price Control Act and not to things done contrary to or in violation of it, whether in good or bad faith. As the report of the Senate Committee on Currency and Banking declared, Sen. Rep. 931, 77th Cong., 2d Sess., at the time the statute was enacted, 'of course Section 205(d) does not confer any immunity upon any person who violates any such provision, regulation, order or requirement.' See also Bowles v. Indianapolis Glove Co., 7 Cir., 150 F. 2d 597, 600; Bowles v. Franceschini, 1 Cir., 145 F. 2d 510, 512-514; Schreffler v. Bowles, 10 Cir., 153 F. 2d 1, 4. For any violation of a price regulation, the liability in damages is governed by section 205(e) as amended, 50 U.S.C.A. Appendix §925(e), and under that section good faith is in no way a defense to the recovery of overcharges but is relevant only on whether and how much the recovery should be increased beyond that amount in achieving the purposes of the Act. Cf. Speten v. Bowles, 8 Cir., 146 F. 2d 602; Shearer v. Porter, 8 Cir., 155 F. 2d 77; Bowles v. Franceschini, 1 Cir., 145 F. 2d 510, 513, 514."

This Court, as well as other Circuit Courts of Appeals, have also had occasion to discuss the effect of good faith by a person who violates. In *Fontes v. Porter,* 156 F. (2d) 956, this Court said at page 958:

"Appellant says that his good faith in the transaction should be taken into account. Good

faith, however, is not a defense to an action for damages. Lack of willfullness, coupled with the taking of practicable precautions against the occurrence of a violation, operates only to reduce damages to the amount of the overcharge. Consult § 205(e)."

To the same effect are:

Bowles v. Hasting (C.C.A. 5), 146 F. (2d) 94, 95;

Bowles v. Indianapolis Glove Company (C.C.A. 7), 150 F. (2d) 597, 600;

Bowles v. Franceschini (C.C.A. 1), 145 F. (2d) 510, 514.

As this Court pointed out in the *Fontes* case, the effect of good faith, i.e., lack of willfullness, when coupled with the taking of practicable precautions against the occurrence of the violation, operates only to reduce the damages to the amount of the overcharge. Since the Administrator had stipulated that in the event judgment was rendered in favor of the plaintiff, he would not ask for damages to exceed the amount of the overcharge, appellees were in a position to obtain every advantage to which their good faith entitled them.

CONCLUSION.

Appellees admittedly violated the revised regulation by selling in excess of the maximum prices permitted by the revised regulation. The circumstances relied upon by appellees to absolve them from liability are not valid defenses to the action. Their lack of will-

fullness in violating goes merely to the amount of damages which may be recovered against them. The fact that appellees relied upon the mimeographed notices instead of looking to the revised regulation does not create an estoppel against the Administrator, since the mimeographed notices did not constitute an official interpretation.

The judgment below is therefore clearly erroneous and should be reversed and the case remanded, with directions to the lower Court to enter judgment in favor of the plaintiff in the sum of $714.01 and costs.

Dated, November 15, 1946.

Respectfully submitted,

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(Appendix Follows.)

Appendix.

Appendix

STATUTES AND REGULATIONS INVOLVED.

STATUTE.

The pertinent provisions of the Emergency Price Control Act (50 U.S.C. §901, et seq.) are as follows:

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 201(d):

The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

Section 205(e):

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence

of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. * * *

REGULATIONS.

The pertinent provisions of Revised Procedural Regulation No. 1 (7 F.R. 8961) are as follows:

> Pursuant to the authority of sections 201 (d) and 203 of the Emergency Price Control Act of 1942, as amended (Pub. Laws 421 and 729, 77th Cong., E.O. 9250, 7 F.R. 7871) Procedural Regulation No. 1—Procedure for the Issuance, Protest and Amendment of Maximum Price Regulations, is hereby revoked and the following rules are prescribed for the issuance, adjustment, amendment, protest and interpretation of maximum price regulations:
>
> * * * * * * *

ARTICLE VI—INTERPRETATIONS.

SEC. 54. *Interpretations.* An interpretation rendered by an officer or employee of the Office of Price Administration with respect to any provision of the Act or of any regulation, price schedule, order, requirement, or agreement thereunder, will be regarded by the Office of Price Administration as official only if such interpretation was requested and issued in accordance with section 55 of this regulation. Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the Act, or of the regulation, price schedule, order, requirement or agreement to which such official interpretation relates. An official interpretation shall be applicable only with respect to the particular person to whom, and to the particular

factual situation with respect to which, it is rendered, unless publicly announced as an interpretation of general application.

SEC. 55. *Requirements governing interpretations*—(a) *Requests for interpretations; form and contents.* Any person desiring an official interpretation of the Emergency Price Control Act of 1942 or any regulation, price schedule, order, requirement or agreement thereunder shall request it in writing from the nearest district office of the Office of Price Administration. Such request shall set forth in full the factual situation out of which the interpretative question arises and shall, so far as is practicable, state the names and post office addresses of the persons involved. If the inquirer has previously requested an interpretation on the same or substantially the same facts, his request shall so indicate and shall name the official or office to whom his previous request was addressed. If the interpretation will affect operations of establishments located in more than one state, the request shall name the states in which the establishments are located. No interpretation shall be requested or given with respect to any hypothetical situation or in response to any hypothetical question.

(b) *Interpretation to be written; authorized officials.* Official interpretations shall be given only in writing, signed by one of the following officers of the Office of Price Administration: The Price Administrator, the General Counsel, any Associate or Assistant General Counsel, any Regional Attorney, any Regional Price Attorney, any District Price Attorney, and any Division

Counsel to a Price Division or Chief Counsel to a Price Branch in the Office of Price Administration, Washington, D. C., *Provided,* That interpretations of general application shall be announced only by the Price Administrator, the General Counsel, any Associate or Assistant General Counsel, or any Regional Attorney or any Regional Price Attorney.

* * * * * * *

The pertinent provisions of Revised Maximum Price Regulation No. 330 (9 F.R. 11350) are as follows:

SEC. 2. *How to find your ceiling prices under this regulation*—(a) *Explanation of rules.* You find your ceiling price under this regulation by calculating the markup which you took on garments you delivered during the "base period", and then applying that markup to the cost of the garments you are pricing. You find what the "base period" markup is by using one of the pricing rules which are given in section 4.

* * * * * * *

(c) *What is the "base period?"* The base period is very important because you must figure your mark-up from your deliveries of garments during that period.

(1) *For sales of toddlers' garments, or blouses under size 30, or slacks and slack suits.* (i) The "base period" for all garments in categories 5a, 10a, 15a, 20a, 25a, 26a, 26b, and 32-39 is the period between August 1 and December 31, 1942 for retailers and the period between July 1 and October 31, 1942 for wholesalers.

(ii) For retailers who made their first delivery of garments in categories 5a, 10a, 15a, 20a, 25a, 26a, 26b, or 32-39 after October 1, 1942 (September 1, 1942 for wholesalers) but before May 18, 1944 the "base period" is the first four months immediately following the first delivery of garments.

(2) *For sales of garments in all other categories.* (i) The "base period" for retailers is the period between August 1 and December 31, 1941; for wholesalers, it is the period between July 1 and October 31, 1941.

(ii) For retailers who made their first delivery of garments in these categories after October 1, 1941 but before May 18, 1944, and for wholesalers who made their first delivery of garments after September 1, 1941, but before May 18, 1944 the "base period" is the first four months immediately following the first delivery of garments.

SEC. 3. *Pricing charts.* In order to price under this regulation you must have a pricing chart. If you price under section 5 your order of authorization will set forth your pricing chart, and you do not need to file a chart. On or before October 15, 1944, every seller subject to this regulation (except sellers who apply under section 5 and sellers who are members of chains which have received orders authorizing uniform pricing from the OPA), must file two signed copies of a pricing chart with the Office of Price Administration at the district office having jurisdiction over the area in which the seller is located. You must keep a copy of the pricing chart for your own use. On and after November 15, 1944, you may not sell or deliver any garments subject to this

regulation unless you have received an acknowledgment from the OPA of the filing of your pricing chart as required by this section.

(a) *How to prepare a pricing chart.* Each pricing chart must contain the following:

(1) The seller's name and address.

(2) Type of seller (wholesaler—with stock, without stock, etc.; retailer—basement department, chain outlet, specialty shop, etc.).

(3) If your first delivery of any category covered by this regulation was after October 1, 1941 (September 1, 1941 for wholesalers), then list the date of such first delivery.

(4) A list of the categories you delivered during your base period.

(5) A list of the cost prices at which you purchased garments in each of these categories. You must indicate whether this is a unit or dozen price. If you intend to use the exception provided in Rule 1 (section 4 (b) (1) for any cost prices, such cost prices on your pricing chart should be preceded by the symbol "S".

(6) The discount, terms or allowance at which you purchased the largest number of garments at each cost price listed in (5). (Wholesalers must also include the discounts, terms and allowances on which they customarily sold.)

(7) The selling price at which you delivered, during the base period, the largest number of garments of each cost price listed in (5).[1] If during

[1]The selling price authorized for a particular cost price in any category by an order granting an adjustment under MPR 153, as amended, shall be deemed to be the selling price at which the seller during the base period delivered the largest number of garments of that category having the same cost price.

the base period you delivered an equal number of garments at two or more different selling prices, list the lowest of these selling prices. (Wholesalers must indicate whether this is a unit or dozen price.)

For example: During the base period you delivered a total of 250 women's dresses (Category 21) which you bought at a $6.75 cost price. Of these 250 dresses, your selling price was $9.95 for 50 of the dresses, $10.95 for 125 of them, and $11.95 for 75 of them. You list $10.95 on your pricing chart as the price at which you delivered during the base period the largest number of women's dresses costing $6.75. If you had delivered 125 of these dresses at $9.95 and 125 at $10.95, you would list $9.95 as the selling price at which you delivered the largest number of women's $6.75 dresses.

(8) The percentage markup taken on each selling price listed in 7.[2]

An example of a pricing chart and detailed instructions for its preparation are found in Appendix B.

Selling price lines and percentage markups of sellers who made their first deliveries after June 15, 1942 may be revised at any time by the OPA if they were improperly established or are based on an improper selection of competitors.

NOTE: Throughout this regulation, reference is made to categories, prices and markups listed

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[2]Any percentage markup authorized for a particular cost price and/or category by an order granting an adjustment under MPR 153, as amended, shall be deemed to be the percentage markup taken by the seller on the largest number of garments of that cost price and/or category delivered during the base period.

on the seller's pricing chart. The expression "pricing chart" is intended to refer to a pricing chart correctly prepared in accordance with the instructions contained in paragraph (a) of this section. If a seller's pricing chart is improper or inaccurate, his maximum prices under section 4 of this regulation shall be prices calculated on the basis of a correct pricing chart.

(b) *How to amend a pricing chart.* If you have filed your pricing chart, and then find that it was incorrect, you may file with the district office where you filed your original chart two signed copies of an amended pricing chart setting forth the inaccuracies and the reasons therefor. However, until you have received an acknowledgment from the OPA of the receipt of this amended pricing chart, you must not take a higher percentage markup than that previously reported, or permitted under this regulation, whichever is lower.